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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,413	06/21/2001	Benjamin Ball	9289-7	7645

20792 7590 03/15/2004

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PO BOX 37428
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EXAMINER

MATHEW, FENN C

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 03/15/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/886,413

Applicant(s)

BALL ET AL.

Examiner

Fenn C Mathew

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 6-9, 25-26, and 29-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Webber (U.S. 6,561,960). Referring to claim 1, Webber discloses a frame, a movement arm (28) pivotally attached to the frame and movable along a generally longitudinal stroke path between a forward and rearward position, a resistance imparting unit (weights) operatively connected with the movement arm to provide resistance, a pair of handles (44) to be grasped by the user, a pair of extension members (41), each of which is attached to a respective handle such that each handle is free to rotate about a longitudinal axis of the extension member, wherein the extension members are attached to the movement arm such that each extension member is free to rotate relative to the movement arm about vertical, longitudinal, and transverse axes, and wherein the extension members are of sufficient length and the extension members are attached to the movement arms so that the handles can be separated by a distance of at least 24 inches when the movement arm is in the

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rearward position. (Flexibility of extension members allow for any distance between handles).

3. Referring to claim 2, Webber discloses use of a weight stack (figs. 7a, 7b).
4. Referring to claims 6-9, Webber teaches a four bar linkage which can be used to vary resistance, a swing link connected to the frame, and a pulley in conjunction with the swing link, the pulley carrying a belt connected to the resistance imparting unit.
5. Referring to claim 25, 26, and 29-32, Webber discloses the claimed invention as cited in the above paragraphs. Furthermore, Webber discloses a seat member attached to the frame.

Claim Rejections - 35 USC § 103

6. Claims 3-5, 10-24, and 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webber. Webber has disclosed the claimed structural limitations as discussed above. Limitations drawn to specific size ranges of the extension members are considered a matter of obvious design choice within the knowledge of the skilled artisan, as the skilled artisan would select extension member lengths based on suitability for intended use. Furthermore, limitations drawn to the use of ball bearing joints or rotary joints are also considered matters of obvious design choice, as the Webber device allows free rotation in longitudinal, transverse, and vertical axes. The use of rotary and ball joints are considered art recognized alternatives or equivalents to the configuration taught by Webber.

Response to Arguments

7. Applicant's arguments with respect to claims 1-16 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Barnhill U.S. 1,205,426

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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February 26, 2004

A handwritten signature in black ink, appearing to read "N. Lucchesi", with a long horizontal flourish extending to the right.

NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700